

DR. KRUSHNA CHANDRA SAHU AND OTHERS

A

v.

STATE OF ORISSA AND OTHERS

SEPTEMBER 8, 1995

[S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.]

B

Service Law :

Orissa Homeopathy Medical Teaching Services (Methods of Recruitment and Conditions of Service) Rules, 1980—Rules 6, 7 & 8—Appointment to the Post of Junior Teachers—Recruitment to the post of Junior Teachers made on the basis of selection held by the Selection Board need not be in consultation with the Public Service Commission—However such selection cannot be made on the sole basis of candidates' character Rolls—Qualities required for teaching post—Laid down.

C

Powers of Selection Committee—Selection Committee or Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.

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The Appellants who had obtained Diploma in Homeopathic Medicine and Surgery, and the Respondents 5 and 6 who had obtained Degree in Bachelor of Homeopathy Medicine & Surgery were originally working as Homeopathic Medical Officers in the State of Orissa.

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In 1985, the appellant were recruited as Junior Teachers in the Dr. Abin Chand Homeopathic Medical College and Hospital, Bhubaneswar. When a challenge was made to their recruitment by respondents 5 & 6 the High Court quashed their selection on the ground that the selection was not made by a proper Selection Board and directed the State to conduct fresh selection.

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On constituting a fresh Selection Board and on reconsideration the appellants were again appointed as Junior Teachers/Demonstrators. This was again challenged before the Tribunal and the Tribunal quashed the selection on the following grounds

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(a) the candidates who were selected by the Selection Board had to be approved by the Public Service Commission;

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A (b) the selection was vitiated by the method adopted in as much as it was solely based on the character rolls; and

(c) the candidates should have been allotted to different disciplines available in the College.

B The appellants viz. the candidates and also the State in a separate Appeal contended that rule 5 of Service Rules 1980 as to selection of Junior Teachers does not require the consultation with the commission, and that the Tribunal could not sit in judgment over the selection process and that the non-assignment of different disciplines does not vitiate the selection itself.

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Disposing of the Appeals, this Court

D HELD : 1. The Rules 6, 7 and 8 of the 1980 Rules which deal with promotion to the post of lecturers and principal of Homeopathic Colleges do not apply to the recruitment of Junior Teachers. [430-F]

E 2. The selection of candidates is not vitiated by their non-allocation to various disciplines in the college or by not determining the vacancies discipline-wise before selection, as it is always open to the Colleges authorities to allocate the appellants to different disciplines even after selection. [431-H]

3. The selection Committee does not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Article 309. [433-G]

F 4. The following three criteria are to be followed for appointment on a teaching post viz.

(a) he should have thorough knowledge of the subject concerned;

G (b) he should be organised in his thoughts; and

(c) he should possess the art of presentation of his thoughts to the students. [435-D]

H 5. The Character Rolls cannot form the SOLE basis for determination of suitability for the post of junior teachers. [435-F-G]

6. The basis of character rolls adopted by the selection Board was wholly arbitrary besides being without authority or jurisdiction. [436-F] A

7. The selection should have been held on a criteria which was inclusive of the merits so that the best and most suitable could have been selected. [436-G]

Liladhar v. State of Rajasthan, [1981] 4 SCC 159 and *Ashok Kumar Yadav's case* [1984] 4 SCC 417, affirmed. B

Pervez Qadir v. U.O.I. and Others, [1975] 4 SCC 318 and *R.S. Dass v. U.O.I & Ors.*, AIR (1987) SC 593, distinguished. C

Dalpat Abasaheb Solunke and Others v. Dr. B.S. Mahajan & Ors., [1990] 1 SCC 305; *State of A.P. & Anr. v. V. Sadanandam and Others* AIR (1989) SC 2060; *Ramachandra Iyer & Ors. v. U.O.I. & Ors.* [1984] 2 SCR 200; *Umesh Chandra Shukla Etc. v. U.O.I. & Ors.*, [1985] 2 SCR 367; *Sh. Durga Charan Misra v. State of Orissa and Others*, (1987) 2 UJSC 657 and *B.S. Yadav and Others v. State of Haryana & Ors.*, AIR (1981) SC 561; referred to. D

[This Court issued directions to the State to conduct fresh selection after amendment of the rules or after issuing necessary instructions taking into consideration the observations in the judgment and to continue the appellants on ad-hoc basis till fresh selections were made. [437-B-C] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8164 of 1995 Etc.

From the Judgment and Order dated 14.5.90 of the Orissa Administrative Tribunal in O.A.No. 187 of 1987. F

A.K. Panda, P.N. Misra, A. Mariarputham, Ms. Aruna Mathur, C.S. Srinivasa Rao and J.S. Wad, for the appearing parties.

The Judgment of the Court was delivered by G

S. SAGHIR AHMAD, J. Special leave granted.

The controversy in these cases relates to the appointment of the appellants in Civil Appeal No. 8164/95 arising out of SLP (C) No. 13002 of 1990 as junior teachers in Dr. Abin Chand Homeopathic Medical H

A College and Hospital, Bhubaneswar (for short, 'College') affiliated to the Utkal University who, since their appointment, are constantly involved in litigation as their appointments were first challenged in two Writ Petitions namely, OJC Nos. 2217 of 1984 and 19 of 1985 in the Orissa High Court which by its judgment and order dated 30th July, 1985 partially allowed the petitions and quashed their selection on the ground that the Selection Board was not constituted in accordance with the provisions contained in rule 5(1) of the Orissa Homeopathy Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules 1980 and issued directions for fresh selection and thereafter when the petitioners were again selected, their appointment, this time, was challenged before the Orissa Administrative Tribunal which, by its judgment and order dated May 14, 1990, quashed their appointment and ordered that they would continue on *ad hoc* basis until a final selection was made by the Orissa Public Service Commission. It is against this judgment that the appeal No. 8164/95 arising out of SLP No. 13002 of 1990 has been filed.

D Appeal No. 8166/95 arising out of SLP (C) No. 474 of 1991 has been filed by the State of Orissa against the same Judgment of the Tribunal passed on May 14, 1990. Subsequent to the judgment dated May 14, 1990, a Review Petition was filed before the Tribunal in so far as it related to the following direction :

E "Government may send the names of candidates who have opted according to the seniority 3 to 4 times the number of vacancies with their academic qualification in all examinations along with CCR for consideration."

F The Tribunal by its judgment and order dated August 16, 1990, allowed the Review Petition and passed the following direction :

G "We, therefore, direct that the Selection Board under rule 3 make the selection on merit of all eligible candidates on a procedure prescribed by the State Government preferably through a competitive examination and forward 3 to 4 times the names to the Public Service Commission for their final selection. We are sorry that the various amendments made to the 1980 Rules have not been consolidated into one rule causing this error on our part.

H The error occurred because the three amendments made to the

Rules escaped our attention. Since the procedure suggested by us now would be more dilatory than was contemplated earlier according to our direction, the process should be completed within a year." A

This order has been challenged in appeal No. 8165/95 arising out of SLP (C) No. 14868 of 1990. B

This Court while issuing notice on the SLPs had directed that status-quo as on november 26, 1990, with regard to selection in pursuance of the Judgment of the Orissa Administrative Tribunal, shall be maintained. During the pendency of the SLPs, the State Government intended to make promotions on the posts of lecturers from amongst the Junior teachers but the Tribunal by its interim order dated 12.8.1992 which was, allegedly, passed without notice to the appellants, restrained the State Government from making any promotion on the posts of lecturer on the ground that such promotions would result in violation of this Court's Order regarding "Status quo". Appeal No. 8167/95 arising out of SLP (C) No. 14340 of 1992 is directed against this order (dated 12.8.92) of the Tribunal. C D

Leave has been granted in all the SLPs and they have been heard together for final disposal with appeal No. 8164/95 arising out of SLP(C) No. 13002 of 1990 being the leading case. E

The appellants had obtained Diploma in Homoeopathic Medicine and Surgery from Orissa Board of Homoeopathic Medicine recognised by the Central Council constituted under the Homoeopathy Central Council Act, 1973 and were, thereafter, appointed as Homoeopathic Medical Officers in the State of Orissa where respondents 6 & 7 who had obtained Degree of Bachelor of Homoeopathic Medicine and Surgery from the College were also appointed as Homoeopathic Medical Officers. F

Induction of Medical Officers into teaching jobs is regulated by the Orissa Homoeopathic Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules, 1980 (for short, Rules) made by the Governor of Orissa in exercise of power conferred by the proviso to Article 309 of the Constitution. These Rules regulate the appointments on the post of "junior teacher", "lecturer" and "principal" in the Homoeopathic Medical Colleges. We are, in the present case, concerned with the appointments made on the posts of "junior teachers". G H

A Appellants who were already serving as Medical Officers were appointed on the posts of junior teachers on the basis of selection held in 1984-85. Their appointment was challenged by respondents 6 & 7 through Writ Petitions filed in the Orissa High Court which by its judgment and order dated 30.7.1985 set aside the appointments with the following findings :

B "In view of the above, we have no hesitation to hold that constitution of the Selection Board which interviewed candidates for appointment to posts of Junior Teachers in the Homoeopathic College on 28-12-1984, 29-12-1984, 31-12-1984, 6-1- 1985 or on any other date was in contravention of Rules 5(1) of the Rules and therefore, it was illegal and unconstitutional. Any selection made by the Selection Board shall be bound to be invalid in the eye of law. Therefore, the selection made by the Selection Board, if any, is liable to be quashed. The second contention accordingly succeeds."

D The High Court, however, did not accept the other contention raised by the respondents 6 & 7 that the appellants being mere diploma holders, were not qualified and eligible, and, therefore, ought not to have been considered.

E A fresh selection Board, as directed by the Orissa High Court was constituted which, on a reconsideration of all those candidates who had originally opted/applied for the posts of junior teachers, again selected the appellants, as also two others, and, thus, they came to be appointed as Demonstrators in the College on regular basis but their (regular) appointment was set aside by the Tribunal with a positive finding that after selection by the Selection Board constituted under Rule 5, the candidates had to be finally selected by the Public Service Commission as required by Rule 10 and since petitioners were directly appointed on the posts of Junior teachers immediately after being selected by the Selection Board without the matter being placed before the Commission for final selection, their regular appointment was vitiated. The selection was also found vitiated by the mode and manner, or, to put it differently, the procedure, adopted by the Tribunal at the selection.

H The Tribunal held the selection to be vitiated for two more reasons, namely that it should have been made on the basis of merit and not merely

on the basis of confidential character rolls of the candidates (Medical Officer) and, secondly that the candidates should have been allotted to different disciplines available in the College. A

It is stated on behalf of the respondents which is not disputed by the appellants that appellant no. 1 is dead while appellant No. 6 has since opted out and had gone back to his original post of Homoeopathic Medical Officer. B

Learned counsel appearing on behalf of the appellants as also the counsel appearing on behalf of the State of Orissa have assailed the judgment of the Tribunal and questioned the correctness of the findings recorded on various issues and have contended that the Tribunal was in error in its conclusion that the selection of candidates for appointment on the posts of junior teachers was finally to be made by the Public Service Commission and also that the Tribunal was not correct in recording a finding that the selection of the petitioners was vitiated by the procedure adopted by the Selection Board or by non-assignment of various disciplines to the selected candidates. Counsel for respondents 6 & 7 who had filed the claim petition before the Tribunal, has, on the contrary, contended that the judgment of the Tribunal was unassailable and that the Selection Board was wholly in error in determining the suitability of the candidates on the basis of their confidential character rolls. C D E

Let us first analyse the scheme of the Rules.

There are two categories of teaching posts, namely, "junior teaching posts" and "senior teaching posts" in the Homoeopathic Medical Colleges as defined respectively in Rule 2(d) and 2(g) as under : F

"2(d). "junior teaching posts" means the posts of Clinical tutors, demonstrators and such other posts which may be declared by Government as junior teaching posts."

"2(g). "Senior teaching posts" Means the posts of Lecturers and Principals of the Government Homoeopathic Medical Colleges." G

Rule 3 provides as under :

3 Recruitment to posts of Junior Teachers shall be made H

A from amongst the eligible Homoeopathic Medical Officers found suitable by the Selection Board."

"Selection Board" is defined in Section 2(h) as under :

B "2(h). "Selection Board" means the Selection Board constituted under Rule 5.

Constitution of the Selection Board is indicated in rule 5 as under :

5.(1)(a) The Selection Board for the purpose of selecting junior teachers shall consists of :

C (i) Director of Indian Medicine and Homoeopathy, Orissa, Bhubaneshwar

(ii) Deputy Secretary to Government, Health & Family Welfare Department

D (iii) Principal-cum-Superintendent, Dr. Abin Chandra Homoeopathic Medical College, Bhubaneshwar

(iv) Establishment-cum-Accounts Officer of the Directorate of Indian Medicine and Homoeopathy, Orissa, Bhubaneshwar

E (b) The Selection Board for the purpose of selection of Senior Teachers shall consist of

F (i) The Secretary to Government, Health & Family Welfare Department

(ii) Director of Indian Medicine and Homoeopathy, Orissa, Bhubaneshwar

(iii) Deputy Director, Homoeopathy

G (iv) Deputy Secretary to Government, Health & Family Welfare Department

H (2) The Selection Board may co-opt another member or members of the rank of lecturer who has not less than ten years of experience as such."

Rule 5, prior to its amendment in 1984, read as under : A

"5. (1) The Selection Board shall consists of :

(a) The Chairman of the Commission or a Member of the Commission nominated by Commission as President. B

(b) Director of Indian Medicine and Homeopathy, Orissa or an officer nominated by him, to be a member and

(c) Principal of the Government Homeopathic Medical College or an officer nominated by him as a member C

(2) The Selection Board may co-opt another member or members of the rank of lecturer who has not less than ten years of experience as such". D

A perusal of Rule 3 quoted above indicates that appointment on the posts of Junior teachers has to be made from amongst the eligible Homoeopathic Medical Officers found suitable by the Selection Board. Eligibility has been indicated in Rule 4 as under :

"4. A Homoeopathic medical officer shall be eligible for the post of Junior Teacher if he has - E

(a) a recognised Homoeopathic Qualification from one of the Homoeopathic Institutions included in the Second Schedule of the Homoeopathic Central Council Act, 1973 and F

(b) atleast one year's service in that capacity from the date of his regular appointment as such."

"Recognised Homoeopathic Qualification" has also been defined in these Rules and the definition is contained in Rule 2(f) as under : G

"2(f). "Recognised Homoeopathic Qualification" means qualification obtained in Homoeopathy from any recognised University, Board or other Medical Institutions in India included in the Second Schedule to the H

A Homoeopathic Central Council Act, 1973 and the Medical qualification granted by Medical Institutions outside India which are included in the Third Schedule of the said Act."

Rule 10 provides as under :

B "10. The Seniority of the Junior Teachers shall be according to the ranking given to them at the time of the selection by the Selection Board.

C The Seniority of Senior Teacher and Principal shall be in the order in which their names appear in the final select list at the time of their appointment."

We may also quote Rules 6, 7 and 8 as we shall refer to these Rules during the course of our judgment.

D "6. Recruitment to the Posts of Lecturer shall be made by promotion from amongst the regularly appointed Junior Teachers in consultation with the commissions."

E "7. (i) A Junior Teacher for being eligible for the post of Lecturer shall hold a degree of diploma in Homoeopathy Science after a four year's course in a recognised Homoeopathic Institution in India included in the Second Schedule of the Homoeopathic Central Council Act, 1973 and

F (ii) have rendered not less than five years regular continuous service against the post of Junior Teacher from the date of his regular appointment to that post. Preference may be given to candidates possessing foreign qualification included in the Third Schedule of Homeopathic Central Council Act, 1973."

G "8(1) Recruitment to the post of Principal of Homeopathy College shall be made by promotion from amongst eligible lecturers on the basis of merit and suitability with due regard to seniority and Administrative ability in consultation with the commission.

H A lecturer to be eligible for promotion must have ten years

regular continuous service in a post of lecturer from the date of his regular appointment to the post in accordance with the recruitment rule." A

(2) The Selection Board constituted under rule 5 will consider the cases of the eligible officers on the basis of the record of service, qualification, experience and the like for this purpose the Government and the concerned authorities shall furnish to the Board up-to-date character rolls, particulars of their qualifications and such other information and document as the Board may require. B C

(3) The Selection Board will prepare a list of Officers they consider suitable for promotion in the order of their preference. The number of officers to be included in the list will be such as will be considered sufficient to cover the vacancies which exist or likely to occur in that year and the next year with a reserve as may be necessary. The Board will submit its list along with documents, received by it together with a list of officers who are proposed to be superceded to the Commission. The Commission will submit to the Government the list with its recommendation as to such changes in the list as it considers necessary for approval of Government. The said list of officers who constitute the final select list after approval of Government. The select list will be valid for two years or till a fresh list is prepared whichever is earlier. D E F

Provided that the Government may in consultation with the Commission remove from the list the name of any Officer whose work and concept deteriorate to such an extent that the Government consider him unfit to continue in the list of appointment of officers shall be made to the respective posts in the order in which their number appear." G

The Rules indicate that while the pose of junior teachers are to be filled up by direct recruitment from amongst the eligible Homoeopathic H

A Medical Officers, the post of lecturers and that of the principal are to be filled up by promotion. The post of lecturer is the promotion post for junior teacher while the post of principle is the promotion post for lecturers. Promotions on the post of lecturer and appointment on the post of Principal (by promotion) can be made only in consultation with the Commission.

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Recruitment on the post of junior teachers under the Rules, saw they originally stood, was also to be made in consultation with the Commission but the words, "in consultation with the Commission" occurring in Rule 3 were deleted and substituted by the words "found suitable by the Selection Board" through amendment vide Government Notification dated May 8, 1984 issued by the Government under Article 309 of the Constitution with the result that the requirement to consult the Commission ceased to be obligatory from the date of amendment.

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D Appointments on the teaching posts in the State Homoeopathic Medical Colleges are thus made through two different modes and agencies. While appointment on the posts of junior lecturers and made on the basis of suitability determined by the Selection Board, the senior teaching posts are filled up by promotion through initial selection by the Selection Board followed by the final selection by the Orissa Public Service Commission.

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The Tribunal on the basis of Rule 8(2) read with Rule 10 has found that final selection in the matter of appointment on the post of junior teachers has also to be made by the Commission. This, in our view, is not correct. We have already pointed out above that recruitment on the post of Junior teachers is made on the basis of selection held by the Selection Board and not in consultation with the Commission. Sub-rule (2) of Rule 8 cannot be invoked in the matter of recruitment on the posts of junior teachers as whole of Rules 6, 7 & 8 deal with promotion on the post of lecturers and Principal.

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G Rule 6 provides that recruitment on the post of lecturer shall be made by promotion. Rules 7(i) and (ii) provide for the eligibility of junior teachers for their appointment as lecturer. Rule 8(1) in its first part provides that recruitment on the post of principal shall be made by promotion from amongst eligible lecturers on the basis of merit and suitability with due regard to seniority and administrative ability, in consultation with the Commission. Second part of Rule 8(1) lays down eligibility criteria for

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lecturers for promotion on the post of Principal. Sub-rule (2) of Rule 8 provides that the Selection Board constituted under Rule 5 shall consider the cases of all eligible officers on the basis of record of service, qualification, experience and the like and thereafter under Rule 8(3) if it is provided that the Selection Board shall prepare a list of officers found suitable for promotion and send that list to the Orissa Public Service Commission which, in its turn, shall send the list together with the changes, if any proposed by it, to the Government for its approval. The list on being approved by the Government, becomes the Select List which remains valid for two years or till a fresh list is prepared, whichever is earlier. These provisions, as indicated above, apply to promotions either on the post of lecturer or Principal and not to the appointments on the post of junior teachers for the obvious reason that such appointments are not required to be made "in consultation with the commission", and the Commission, therefore, does not have any role in this process with the result that appointments on the posts of junior teachers can be made directly after the suitability of the candidates is adjudged by the Selection Board.

Even Rule 10 which provides that the seniority of junior teachers shall be determined on the basis of rankings given to them at the time of their selection by the "Commission", cannot be pressed in aid of the contention that Commission has still a vital role to play in the matter of selection as it has already been pointed out above that Rule 3 was amended and the words "in consultation with the Commission" occurring therein were deleted with the result that the posts of junior teachers, ceased to be within the purview of the Commission with effect from May 8, 1984. By another Notification dated Feb. 20, 1993 issued under Art. 309 of the constitution, Rule 10 was amended with retrospective effect (from 8.5.84) and the word "Commission" was substituted by the words "Selection Board" indicating clearly that when Rule 3 was amended in 1984, there was an unconscious omission to amend Rule 10 which, as pointed out above, has since been done and the "Commission" has been totally excluded from the selection scenario. The findings, recorded to the contrary, by the Tribunal in its judgment dated 14.5.90 and reiterated in its order dt. 16.8.90 passed on the Review Petition are not correct. We also do not agree with the Tribunal that selection of the appellants is vitiated by their non-allocation to various disciplines in the college or by not determining the vacancies discipline-wise before selection as it is always open to the college authorities to allocate the petitioners to different disciplines even after

A selection.

Coming now to the merits of the selection, we may, at the outset, indicate that the decision of Selection Committee can be interfered with only on limited grounds, namely, that there was illegality or material irregularity in the constitution of the Committee or in its procedure vitiating the selection of proved *malafides* affecting the selection etc. as laid down by this Court in *Dalpat Abasaheb Sohunke & Ors. v. Dr. B.S. Mahajan & Ors.*, [1990] 1 SCC 305. Let us, therefore, examine whether the selection, in the instant case, is vitiated by any of these factors as also by the "Basis", "Mode & Procedure", allegedly, arbitrarily adopted by the Selection Board in adjudging the suitability of Medical Officers for their appointments on teaching posts.

The Tribunal has quoted the minutes of the proceedings of the Selection Board in its judgment dated 14.5.90 and it will be useful to reproduce the proceedings here as well :

"The Board decided that selection to the post of Demonstrators should be made from amongst the eligible Homoeopathic Medical Officers strictly according to merit and suitability with due regard to seniority. The Chairman Pointed out that since the recruitment Rules do not provide specific principle and guideline to judge the merit and suitability of the candidates the same should be judged basing from the C.C.Rs. of the candidates. This is because they have the requisite qualification and prescribed one year service to their credit. Their performance and suitability is reflected in their C.C.Rs from year to year. To this contention Dr. K.K.Kar, Principal-cum- Superintendent objected in saying that *inter alia* C.C.R. may be one of the consideration but cannot be sole consideration for selection as Demonstrator. He further said that for teaching job academic knowledge and achievement and eloquency on the subject is very much required for which an interview needs to be conducted. The chairman and the other Member of the Selection Board differing from this contention of Dr. Kar opined that interview for a short time cannot be helpful to assess correctly the suitability of the candidates so far knowledge and eloquency is concerned. Therefore after discussion on Dr. Kar's objection Chairman and other Member opined that when C.C. Rs. of can-

didate, Homoeopathic Medical Officers are available interview for short while will not be sufficient to judge their suitability. Therefore it is decided that it is not necessary to assess the academic knowledge and eloquency by conducting a personal interview C.C.Rs. will be the sole guide to judge the merit-cum- suitability with due regard to seniority....." A B

The proceedings indicate that since Rule 3 was silent as to the guidelines on the basis of which suitability of the candidate was to be adjudged, the members constituting the Selection Board, by a majority decision, resolved to determine the suitability on the basis of confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers. C

Now, power to make rules regulating the conditions of service of persons appointed on Govt. Posts is available to the Governor of the State under the Proviso to article 309 and it was in exercise of this power that the present rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government) under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. See" *Sant Ram v. State of Rajasthan*, (1967) SC 1910. D E

In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability. F G

The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Article 309. It is basically the function of the Rule making authority to provide the basis for selection. This Court in *State of Andhra* H

A *Pradesh and Another v. V. Sadanandam and Others*, AIR (1989) SC 2060, observed as under :

B "We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that *the mode of recruitment and the category from which the recruitment to a service should be made* are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive *in choosing the mode of recruitment of the categories from which the recruitment should be made* as they are matters of policy decision *falling exclusively within the purview of the executive.*"
 C (Emphasis supplied)

D The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *Ramachandra Iyer & Ors. v. Union of India & Ors.*, [1984] 2 SCR 200, it was observed :

E "By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm."

F Similarly, in *Umesh Chandra Shukla Etc. v. Union of India & Ors.*, [1985] 2 SCR 367, it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Sh. Durgacharan Misra v. State of Orissa & Ors.*, (1987) 2 UJSC 657 and the limitation of the Selection Committee were pointed out that it had no
 G jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva-voce test.

H It may be pointed out that rule making function under Article 309 is legislative and not executive as was laid down by this Court in *B.S. Yadav & Ors. v. State of Haryana & Ors.*, AIR 1981 SC 561. For this reason also,

the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection. A

If it were a mere matter of transition from one service to another service of similar nature as, for example, from Provisional Civil Service to All India Forest Service or from Provincial Civil Service to Indian Administrative Service, the confidential character rolls could have constituted a valid basis for selection either on merit or suitability as was laid down by this Court in *Pervez Qadir v. Union of India & Ors.*, [1960] 2 SCR 432 = AIR (1975) SC 446 = [1975] 4 SCC 318, which has since been followed in *R.S. Dass v. Union of India & Ors.*, AIR (1987) SC 593. But in the instant case, appointments are being made on posts in an entirely new service, though the educational qualifications required to be possessed by the candidates are the same as were required to be possessed in their earlier service. B C

A candidate in order to be suitable for appointment on a teaching post must have at least three qualities; he should have thorough knowledge of the subject concerned; he should be organised in his thoughts and he should possess the art of presentation of his thoughts to the students. These qualities cannot possibly be indicated or reflected in the confidential character rolls relating to another service, namely, the service in the Health Department as Homoeopathic Medical Officers where the character rolls would only reflect their integrity, their punctuality, their industry and their evaluation by the Reporting or the Accepting officer recorded in the annual entries. True it is that the candidates being already serving officers, their character rolls have to be looked into before inducting them in the new service but this can be done only for the limited purpose of assessing their integrity etc. These character rolls, however, cannot form the SOLE basis for determination of their suitability for the posts of junior teachers in the Medical Colleges. Then, what formula or method should be adopted to assess these qualities is the question which next arises. This Court in *Liladhar v. State of Rajasthan*, [1981] 4 SCC 159 = AIR (1981) SC 1777, pointed out : D E F G

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, H

A tested impartiality and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services."

B It further observed :

"It is now will recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's alertness, resourcefulness, dependability, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others adaptability, judgment, ability to make decision, ability to lead intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the Interview Board."

E *Liladhar's* case was approved in *Ashok Kumar Yadav's* case [1984] 4 SCC 417.

F On the basis of these decisions, we are inclined to say that in order to assess the suitability or real worth of a candidate for the post of junior teacher in the college, the basis, namely, the character rolls, adopted by the Selection Board was wholly arbitrary besides being without authority or jurisdiction.

G We, therefore, agree with the ultimate order passed by the Tribunal that the selection should have been held on a criteria which was inclusive of the merits so that the best and most suitable could have been selected. It will be noticed that the Orissa High Court in its judgment dated 14.5.90 had already expressed the hope that selection for the post of junior teacher shall be held on the basis of merit. This judgment has since become final as it was not challenged anywhere by any of the parties involved in that case. When, however, a fresh selection was held in pursuance of the judgment passed by the Orissa High Court, merit was completely ignored and the Selection Board proceeded to determine the suitability of the

candidates on the basis of their character rolls although, in the earlier selection which has since been set aside by the Orissa High Court, the suitability was determined on the basis of interview.

We, however, cannot ignore the fact that the petitioners who were first selected in 1985 and when their selection was set aside by the Orissa High Court and a fresh selection was held in 1987, they were again selected and are working on the post of Junior teachers since then. For having worked on the post in question for well over 7 years, the petitioners must have gained sufficient experience, knowledge and expertise in their subject. The Tribunal while setting aside their selection observed that they shall not be treated to have been regularly appointed but shall be allowed to continue on *ad hoc* basis so that when a fresh selection is held, the petitioners or any of them who is not found suitable, may yield place to the new incumbent who is found ultimately by the Selection Board to be suitable for the post in question.

Having regard, therefore, to the totality of the circumstances, we dispose of these appeals with the following direction :

(a) The appellants shall continue on *ad hoc* basis till a fresh selection is held.

(b) The Government before requiring the Selection Board to hold a fresh selection shall either suitably amend the rule or issue necessary administrative/executive instructions laying down the basis on which the suitability of the candidates shall be determined keeping in view specially the observations made by us in this judgment.

(c) At the time of fresh selection or fresh determination of suitability, the field of selection shall be restricted to the appellants and respondents 5 & 6 and those who might have opted for this service up to the date of last selection held by the Selection Board which has since given rise to the present legal battle.

There will be no order as to costs.

V.M.

Appeals disposed of.